LAW GOVERNING

MANUFACTURING AND MERCANTILE

CORPORATIONS

AND

CORPORATIONS FOR OTHER LAWFUL BUSINESS

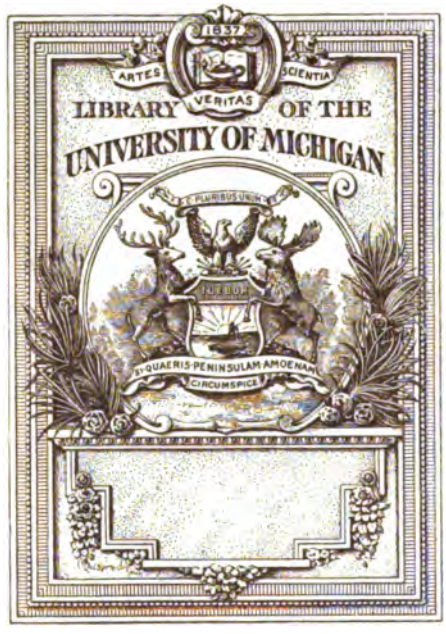
UNDER

ACT NO. 232, P. A. OF 1903

WITH ANNOTATIONS

COMPILED BY
FREDERICK C. MARTINDALE
SECRETARY OF STATE

LANSING, MICHIGAN
WYNKOOP HALLENBECK CRAWFORD COMPANY, STATE PRINTERS
1909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MANUFACTURING AND MERCANTILE CORPORATIONS

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CORPORATIONS FOR OTHER LAWFUL BUSINESS.

[Act 232, P. A. 1903.]

AN ACT to revise and consolidate the laws providing for the incorporation of manufacturing and mercantile companies or any union of the two, and for the incorporation of companies for carrying on any other lawful business, except such as are precluded from organization under this act by its express provisions, and to prescribe the powers and fix the duties and liabilities of such corporations.

The language of the title indicates an intention to include in the act control over the incorporation of the companies mentioned and the title indicates the purpose of the law. The object of the law is a single one which is consistent with its general purpose, and the act is not unconstitutional.—Grimm v. Secretary of State, 137 / 134.

For prior legislation see Act 144 of 1851, Act 41 of 1853, Act 187 of 1875, Act 274 of 1881 (held unconstitutional because *mercantile business* was not included in the title), and Act 232 of 1885.

Act 42 of 1867 amended Act 41 of 1853 by providing for companies engaged in manufacture of salt. Such companies were excepted from Act 232 of 1885. But Act 41 was repealed by Act 252 of 1897.

The People of the State of Michigan enact:

SECTION 1. Any three or more persons desiring to become incorporated for the purpose of carrying on any manufacturing or mercantile business, or any union of the two, or for buying, selling and breeding cattle, sheep and horses, or other live stock, or for engaging in maritime commerce or navigation, or for the purchasing, holding and dealing in real estate, or for conducting a warehouse and storage business, or for erecting and owning buildings to be occupied or leased for dwelling houses, halls, or business purposes, or for the production and supplying of gas and electricity for lighting, fuel or other purposes, or for printing, publishing and book-making, or for carrying on any other lawful business, except such as are excluded by section thirty-six of this act, may, by complying with the provisions of this act, with their successors and assigns, become a body politic and corporate. Who may incorporate, and for what.

The charter of a private corporation is a contract between the government and the corporators.—Mich. State Bank v. Hastings, 1 Doug., 224, 234; Flint & F. P. R. Co. v. Woodhull, 25 / 99.

A corporation and its members are distinct persons, and not in any legal sense identical.—Talbot v. Scripps, 31 / 268; Hanson v. Donkersly, 37 / 186. Rights of membership in a corporation can be obtained only in compliance with its charter or governing law, and if they prescribe any conditions or special methods of becoming a member, the law is imperative.—Carlisle v. S. V. & St. L. R. R. Co., 27 / 315. The ownership of stock constitutes the holder a member of the corporation.—Dexter & M. P. R. Co. v. Millerd, 3 / 91. Mandamus will lie to compel the restoration of a member to rights of which he has been unjustly deprived.—Roehler v. Mechanics' Aid Soc., 22 / 86.

Private corporations can be formed only under general laws, and in strict conformity with the provisions regulating their organization.—Const., art. xv, sec. 1; Doyle v. Mizner, 42 / 332.

A corporation is an artificial being, created by law, with limited powers and for specified purposes, with a tacit condition annexed to its charter, that it will exercise its franchise in the manner and for the purposes specified therein, and not otherwise.—Atty. Gen. v. Oakland Co. Bank, Walk Ch., 90, 97; and that it shall act up to the end or design for which it was created.—People v. Bank of Pontiac, 12 / 537.

Corporations can exist only by force of express law.—Scheutzen Bund v. Agitations Verein, 44 / 313. Their legal existence, by force of obligatory law, is confined to the State creating them.—Thompson v. Waters, 25 / 214.

Articles of association, blanks for.

SEC. 2. The articles of association of every such corporation shall be made on suitable and uniform blanks which it is hereby made the duty of the Secretary of State to furnish on application free of charge, or upon blanks substantially uniform approved by the Secretary of State, which articles shall be signed by the persons associating in the first instance and acknowledged before some person authorized by the laws of this State to take acknowledgments of deeds, and shall state:

Proceedings to incorporate must be in strict conformity with the requirements of the statute. Articles of association are not valid, nor entitled to be filed in the office of the Secretary of State unless acknowledged.—Doyle v. Mizner, 42 / 332; Carmody v. Powers, 60 / 29.

For forms of acknowledgment, especially by attorney in fact, see Sec. 9020, C. L. 1897.

To state name.

First, The name assumed and by which the corporation shall be known in law: *Provided*, No name shall be assumed already in use by any other existing corporation of this State, or corporation lawfully carrying on business in this State, or so nearly similar as to lead to uncertainty or confusion;

Proviso as to name.

The object of a corporate name is for the purposes of identification. But a corporation may be known by several names as well as a natural person.—Walrath v. Campbell, 28 / 111, 122. As to when the identity may be shown by parol.—Ibid.

A corporate name is regarded as in the nature of a trade-mark, even though composed of individual names, and its simulation may be restrained.—Williams v. Farrand, 88 / 473.

In Lamb-Knit-Goods Co. v. Lamb Glove & Mitten Co., 120 / 159, and in Penberthy Injector Co. v. Lee-Penberthy Manufacturing Co., 120 / 174, the defendants were enjoined from use of name. See also Myers v. Buggy Co., 54 / 215.

In Supreme Lodge Knights of Pythias v. Improved Order Knights of Pythias, 113 / 133, there was no evidence that any person had been misled, and while the case is near the line, the court held that the rights of the complainant had not been infringed.

Purpose.

Second, Distinctly and definitely, the purpose or purposes for which the corporation is formed, and it shall not be lawful for said corporation to divert its operations, or appropriate its funds to any other purpose, except as hereinafter provided;

The purposes of a corporation are to be determined by the statements contained in its articles of association.—Detroit Driving Club v. Fitzgerald, 109 / 670.

The provisions of 3 How. Stat., Sec. 4161a[1], that the articles of association of a manufacturing corporation shall state the purposes for which it is formed, and that it shall not be lawful for it to divert its operations or ap-

propriate its funds to any other purpose, was incorporated for the protection of the public, and does not operate on the contracts of the corporation so as to prevent it from foreclosing a mortgage given to secure it against liability under a contract of guaranty, which, although ultra vires, was entered into with the assent of all of its stockholders, and which it has fully performed by paying the obligations guaranteed.—Butterworth & Lowe v. Kritzer Milling Co., 115 / 1.

Where corporations are organized under general laws, the organic act, together with the articles of association made in pursuance of it, constitute the charter.—Van Etten v. Eaton, 19 / 194. See Dexter & M. P. R. Co. v. Millerd, 3 / 91. And the powers and privileges of the corporation depend upon the general law and articles, the same as they would upon the charter, if the incorporation were by special act.—Dewey v. Cent. Car. Mnfg. Co., 42 / 399.

All their powers and the purposes for which they are formed must have the legislative assent and sanction, and the acts creating them cannot be extended by construction, to cases not reasonably within their terms.—Stewart v. Father Matthew Society, 41 / 74.

Where one of the purposes set forth in the article is beyond the scope of the statute, the articles ought to be rejected.—Attorney General's Report for 1891-2, 54.

If the articles do not state a purpose for which the statute authorizes a corporation to be formed, it would not be legally incorporated, and its articles would afford no warrant for the exercise of corporate action.—Attorney General v. Lorman, 59 / 157.

No corporation can exist except by force of express law. We have not been referred to any statute of this State under which the plaintiff had or could have organized as a corporation, nor do we know of any under which a corporation with such objects and aims could be formed.—Schuetzen Bund v. Agitations Verein, 44 / 313.

A corporation was organized under a law afterwards declared unconstitutional. The court says: "There was no law authorizing the parties to file their articles of association, or to become incorporated; and there could, under such circumstances, be no corporation *de facto*. There was no statute under which defendants could lawfully incorporate as a mercantile company, and their actions as such are wholly void.—Eaton v. Walker, 76 / 579.

It is undoubtedly well settled that a person who has entered into contract relations with a *de facto* corporation cannot, in an action thereon, deny its corporate character, or set up any informality in its organization, to defeat the action. But there is no law under which the powers they assume might lawfully be created; and the mere fact that they assumed to act as such, even in the full belief that they were legally incorporated, would not constitute them a corporation *de facto*.—Id.

Third, The principal place or places at which its operations are to be conducted; Operations where conducted.

It has been uniformly held in this State that corporations cannot remove from place to place, or establish branches for the transaction of their regular corporate business, unless authorized by law.—Chapman v. Colby, 47 / 46.

A private corporation must be held to reside in the town where its principal offices, as a local inhabitant.—Detroit F. & M. Ins. Co. v. Judge, etc., 23 / 492. And such location cannot be changed without legislative assent.—People v. Aud. Gen., 17 / 161, 170. When a corporation is located by its charter in a particular place, the exercise of its franchise elsewhere is illegal and a cause of forfeiture.—People v. Oakland Co. Bank, 1 Doug., 282; Atty. Gen. v. Same, Walk. Ch. 90; Underwood v. Waldron, 12 / 73; Thompson v. Waters, 25 / 214, 241. But a distinction seems to be made between the place where the principal office is located and other places where much of the company's business may be done.—Van Etten v. Eaton, 19 / 187; 23 / 492-4.

A corporation must have a local habitation. It cannot fix a nominal domicile in the country while its actual domicile for business is in the city; and its local existence must be held to be in some place in the State where its business is carried on.—Detroit Trans. Co. v. Board of Assessors, 91 / 382.

Fourth, The amount of the total authorized capital stock, which shall not be less than one thousand dollars, and not more than twenty-five million dollars; the amount of capital stock subscribed, which shall not be less than fifty per cent of the authorized capital stock; the articles may provide for common and preferred stock subject to section thirty-five, and in that case shall contain an exact statement of the terms upon which the common and preferred stocks are created, and the amount of each subscribed, and the amount of each paid in; Capital stock. Fifty per cent must be subscribed. Common and preferred stock.

A subscription for stock, made after the organization of the corporation, is a transaction between it and the subscriber.—Carlisle v. S. V. & St. L. R. R. Co., 27 / 315. And to be effectual, all the statutory requirements as to the manner of subscribing must be complied with.—Schurtz v. Three Rivers, etc., Co., 9 / 269. Subscriptions, to be valid, must be so made as to bind both the company and the subscriber.—Parker v. Northern Central, etc., Co., 33 / 23; Wright v. Irwin, 35 / 347. Although a subscriber to stock may not question the validity of the corporate organization, he may contest the legality or binding obligation of his subscription.—Swartwout v. Michigan Air Line R. R. Co., 24 / 389. Subscribing for stock imports a promise to pay therefor.—Carson v. Arctic Mining Co., 5 / 288. And an assignee of shares assumes the like undertaking to pay the corporation any balance due to it for the stock.—Merrimac Mining Co. v. Bagley, 14 / 501.

In stock corporations organized for trade, manufacture, or other objects, where it is expected that the investment of the capital stock will yield a return of profits by way of dividends or otherwise, the authorized capital stock is the life-blood of the corporation, and the means through which the object of organization is to be accomplished; hence said stock, and the shares into which it is divided, are required to be fixed by the articles of association.—Association v. Walker, 88 / 64.

Shares.

Fifth, The number of shares into which the capital stock is divided, which shall be of the par value of ten dollars or one hundred dollars each;

Paid in.

Sixth, The amount of capital stock paid in at the time of executing the articles, which shall not be less than ten per cent of the authorized capital, and in no case less than one thousand dollars, except in case of a capitalization of two thousand dollars or under, when it shall be twenty-five per cent thereof, and the amount so paid in shall not be reduced below such per cent of its capital. Such capital stock may be paid in, either in cash or in other property, real or personal; but where payment is made otherwise than in cash there shall be included in the articles an itemized description of the property in which such payment is made, with the valuation at which each item is taken, which valuation shall be conclusive in absence of actual fraud: *Provided,* That only such property shall be so taken in payment for capital stock as the purposes of the corporation shall require, and only such property as can be sold and transferred by the corporation, and as shall be subject to levy and sale on execution, or other process issued out of any court having competent jurisdiction, for the satisfaction of any judgment or decree against such corporation: *And Provided further,* That there shall be made and attached to any such articles of association an affidavit by at least three of the organizers of such corporation, that they know the property described in such articles of association and that the same has been actually transferred to such corporation, and that such property is of the actual value therein stated;

Stock may be paid in cash or other property.

Itemized description of property.

Valuation.

Proviso was added by Act 146 of 1907.

A patent right may be subjected by bill in equity to the payment of a judgment debt of the patentee.—Ager v. Mueray, 105 U. S. 126; Erie Mfg. Co. v. National Wringer Co., 63 Fed. R. 248.

It must be considered as well settled that corporators cannot agree among themselves that property worth only $80,000 shall be treated as worth $422,000, and count, at that sum, as so much capital stock paid in, and then proceed to make their shares as fully paid up and non-assessable upon such false basis, as such action would be clearly a fraud upon the creditors. But it is equally well settled that such corporators are not responsible for an honest error of judgment, or a mistake in placing a valuation upon property appropriated or used as capital by a manufacturing or mining company.—Young v. Erie Iron Co., 65 / 111.

It is a universal rule that where corporators transfer property to a cor-

poration, for which they receive stock, they must act in good faith and put in the property at its fair worth. Creditors have the right to rely upon the good faith of the stockholders, and to assume that they have contributed to the stock subscribed in money or money's worth, or are liable therefor. This liability cannot be evaded by the issuance of fully paid stock when it is not, or by putting in property grossly in excess of the real value.—Moore v. Universal Elevator Co., 122 / 48.

Is a revocable commission agency, yielding from $300 to $1,400 a year, worth $10,000 as part of the capital stock of a corporation organized for another and entirely different purpose? If this contention were sustained, it would result that three or more agents, having no tangible property, might form a manufacturing corporation of $20,000 to $100,000, fully paid up, by simply putting in their revocable agencies as salesmen. This is not the tangible property which the statute requires to constitute a part of the paid-up capital stock of a corporation. It was an intangible asset, of no value whatever to the creditors of the elevator company.—Grant J. in McBryan v. Universal Elevator Co., 135 / 111.

In same case, Grant J. in reference to the item "Business incidental with mechanical engineering, $10,750," says: No tangible property whatever was included in this asset. One of the parties testified that this item "was for our business as experts; our ability to carry on the business; our skill. It didn't represent any tangible property. There was no contract made by which we were to work for the company." He computed the value, "As to the possibility there was in the business we were doing." What is the cash value of a possibility, and that a possibility which Schoonmaker Bros. & Co. had not contracted to continue for the benefit of the corporation?

Grant J. further says, "If the statute required the articles of association to state the property put in as capital stock, it might be held that creditors should deal with the corporation at their own risk. But until the legislature sees fit to enact such a provision, incorporators must be required to act in good faith in placing values upon property put in as a part of paid-up capital stock, and the right of those dealing with the corporations to rely upon these solemn statements must be preserved.

Seventh, The place in the State of Michigan where the office of the company is located; Office.

Eighth, The term of years the corporation is to exist, which shall not be to exceed thirty years; Duration.

Ninth, The names of the stockholders, their respective residences, and the number of shares subscribed for by each; Stockholders, etc.

The amount of the capital stock and number of shares of every corporation organized under this act may be increased or diminished at any annual meeting of the stockholders, or at a special meeting expressly called for that purpose, by a vote of two-thirds of the capital stock of the corporation. In voting upon the increase of the capital stock, the stockholders shall have power, by the same statutory majority, to fix the value of, and the price at which, the increase of the capital shall be subscribed and paid for by the stockholders, but not less than par, as well as the time and manner of the subscription and payment, and by the same vote to authorize the directors of the corporation to sell, at not less than the price so fixed, any part of such increase not subscribed by the stockholders, after they have had a reasonable opportunity to make subscription of their proportionate shares thereof; and to make provision for calling in and cancelling the old and issuing new certificates of stock; but nothing herein contained shall in any way operate to discharge any company, which may diminish its capital stock, from any obligation or demand that may be due from said company. When a corporation shall so increase or diminish its capital stock, the president and a majority of the directors shall make a certificate thereof, which shall be signed by them and recorded and returned as provided herein for recording and returning the

How stock may be increased or diminished.

May fix price of increased stock to stockholders.

Certificate of increase or diminution to be recorded.

original articles of incorporation, and such increase or diminution shall commence and be operative from the date when such certificate is recorded in the office of the Secretary of State: *Provided,* That in order to entitle such certificate to be recorded it must show that at least fifty per cent of the total authorized stock, after such increase, has been subscribed, and that at least ten per cent of the total authorized capital has been actually paid in. The articles of incorporation, besides defining the purposes for which the corporation is formed, as provided in sub-section second above, may also contain any provision which the incorporators may deem advantageous for the regulation of the business and for the conduct of the affairs of the corporation and any provision creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders, or any class or classes of stock and stockholders: *Provided,* The same be not inconsistent with this act, or the general statutes of this State regulating corporations.

Proviso.

Regulating business and defining powers.

Proviso.

Am. 1907, Act 146.

If the corporation desires to increase its capital stock, and, at the same time, to provide for two kinds, it must proceed under Sec. 2, and present a certificate to be filed as required by that section.

Sections 17 and 38 do not nullify the provisions of section 2 as to increasing the capital stock. They refer to other amendments than those increasing or diminishing the stock.—Continental Varnish & Paint Co. v. Secretary of State, 128 / 621.

Where a corporation increases its capital under 2 C. L. sec. 7038, sub. 4, an existing stockholder is entitled to subscribe for his *pro rata* share of the increase at par notwithstanding any attempt on the part of the other stockholders to set a premium on the new stock.—Hammond v. Edison Illuminating Co., 131 / 79.

(Changed by Act 232 of 1903.)

The provision relative to regulating business and creating and defining powers was borrowed from the General Corporation Act of New Jersey.

In Audenried v. East Coast Milling Co., 59 Atlantic Rep. 577, Bergen, V. C., held:

The right "to create" is limited to the establishing of or regulating a power to be exercised by the corporation through its directors, which power shall not be inconsistent with the terms of the general act. To hold that the legislature of our state, by the adoption of our general corporation act, intended to confer upon individuals an indefinite power of legislation, would require the adoption of a liberality of construction which the act does not warrant, and which upon every known principle, is contrary to public policy. The creating of corporate powers is an inherent right of the state exercisable by the legislature only. It cannot be delegated.—Isle Royal Land Co. v. Secretary of State, 76 / 163.

First meeting of stockholders.

SEC. 3. When any number of persons shall have associated according to the provisions of this act, any two of them may call the first meeting of the stockholders, at such time and place as they may appoint, by giving notice thereof by publishing the same in some newspaper published in the county in which its office is located, and if there is no newspaper published in such county, then by publishing the said notice in some newspaper published in an adjoining county, at least two weeks before the time appointed for such meeting. But said notice may be waived by a writing signed by all the subscribers to the capital stock of said corporation, specifying the time and place for said first meeting, which writing shall be entered at full length upon the records of the corporation; and the first meeting of any such corporation, which has been held pursuant to such written waiver of notice, shall be valid.

Waiver of notice.

Directors.

SEC. 4. The stock, property, affairs, and business of every manufacturing or mercantile corporation shall be managed by not less than three directors, who shall be chosen annually by the stockholders, at such time and place as shall be provided by the by-laws of said corporation, and who shall be stockholders, and shall hold their offices for one year, and until others shall be chosen in their stead.

The majority of the directors, when assembled in legal meeting, constitute the board.—Cahill v. K. M. Ins. Co., 2 Doug., 124. A person named as director in the articles of association, and who has acted as such, cannot be removed by parol. Proceedings by the board, without notice, to declare the office vacant, are invalid.—Copland v. Minong Mining Co., 33 / 2. Agreements made by the stockholders severally, on behalf of the corporation, will not bind it.—Finley S. & L. Co. v. Kurtz, 34 / 89. Individual directors cannot bind the company by contracts.—Lockwood v. Thunder Bay, etc., Co., 42 / 536.

Corporate management is, in general, confided to the directors. But stockholders may act in directing investigations of the management and superintendence of the directors.—Star Line v. Van Vliet, 43 / 364. The directors or other board of management having general authority to manage the company concerns, are vested with the only discretionary powers that can exist in any one to carry on corporate business; and such management cannot be assumed by a court of chancery, or vested in a receiver, and cannot be taken from the board except under proceedings to wind up the affairs of the corporation under the statute.—Port Huron & G. Ry. Co. v. Judge of St. Clair, 31 / 456; LaGrange v. State Treasurer, 24 / 468, 471.

The directors of a corporation are required to act in the utmost good faith, and in accepting the office they impliedly undertake to give to the enterprise the benefit of their best care and judgment, and exercise the powers conferred solely in the interest of the corporation.—Ten Eyck v. Railroad Co., 74 / 227.

Courts of equity will not interfere in the management by the directors of the affairs of a corporation unless it is clearly made to appear that they are guilty of fraud or misappropriation of the corporate funds, or refuse to declare a dividend when the corporation has a surplus of net profits which it can, without detriment to its business, divide among its stockholders, and when a refusal to do so would amount to such an abuse of discretion as would constitute a fraud, or breach of that good faith which they are bound to exercise towards the stockholders.—Hunter v. Roberts, Throp & Co., 83 / 63.

Failure to elect at annual meeting.

SEC. 5. If an election of directors in any such corporation shall not take place at the annual meeting thereof, in any year, such corporation shall not thereby be dissolved, but an election may be had at any time thereafter to be fixed upon, and notice thereof to be given by the directors: *Provided*, That in case the directors shall refuse or neglect so to do, any three of the stockholders may call a meeting of the stockholders for the election of directors, by giving the notice as prescribed in section three of this act.

Proviso.

Officers.

SEC. 6. The board of directors shall elect one of their number to be president of the corporation and board, and one or more of their number to be vice president, and shall also choose a secretary and treasurer, and assistants if deemed necessary. The secretary and treasurer shall reside and transact the corporation's business at its office within this State, unless the articles, or an amendment thereof duly made, provide for the location of the principal office of the corporation without this State. The directors shall appoint such other officers and agents as the by-laws of the corporation shall prescribe, who shall hold their offices according to their contracts, or until others are appointed in their stead. If the stockholders so direct the same person may hold the office of secretary and treasurer.

Secretary and treasurer to be residents.

Failure to elect officers does not dissolve the corporation.—Cahill v. K. M. Ins. Co., 2 Doug., 140. Old officers hold over until new ones are elected.—Ibid. Official character is not destroyed by mere lapse of time.—Kimball v. Goodburn, 32 / 10. The acts of officers de facto bind the corporation.—Jhons v. People, 25 / 499. The person holding the office de facto is the only officer known to the law until he is ousted.—People v. Marion, 29 / 31. Except in proceedings to try title to office, the official character of persons acting as officers, may be proved by parol.—Scott v. Detroit Y. M. Soc., 1 Doug., 119; Facey v. Fuller, 13 / 527; Druse v. Wheeler, 22 / 430. The official character and authority of persons acting as officers is not to be questioned collaterally.—Aud. Gen. v. Benoit, 20 / 176. Proceedings against officers after the expiration of their terms, for money misappropriated, or withheld, should be at law and not in chancery.—Bay City Bridge Co. v. Van Etten, 36 / 210.

Acceptance of office in an association does not estop one from denying its corporate existence in the absence of corporate acts on his part.—Fredenburg v. Lyon Lake M. E. Church, 37 / 476.

Vacancy in directors.

SEC. 7. The directors of such corporation shall have power to fill any vacancy which may happen in their board by death, resignation, or otherwise, for the current year.

A resolution of appointment to office is not a contract until accepted; but may be shown as tending to prove the officer's claim for salary, etc.—Kalamazoo, etc., Co. v. Macalister, 40 / 84.

Where corporation may conduct its business.

SEC. 8. It shall be lawful for any corporation organized or existing under the provisions of this act to conduct its business in whole or in part at any place or places within the United States or any foreign country.

Am. 1907, Act 51.

Prior to commencing business articles of association must be recorded.

SEC. 9. Before any corporation, organized under this act to operate in this State, shall commence business, the president shall cause the articles of association to be recorded, at the expense of said corporation, in the office of the Secretary of State of this State, and in the office of the county clerk of the county in which such operations are to be carried on, and before any corporation organized hereunder, to operate outside this State, shall commence business, the president shall cause the articles of association to be recorded at the expense of the corporation, in the office of the Secretary of State and in the office of the county clerk of the county in this State where the office of the corporation is located. The Secretary of State and the county clerk, in whose office such articles of association shall be recorded, shall each certify upon every such articles of association recorded by him, the time when it was received, with a reference to the book and page where the same is recorded, and the record, or transcript of the record, certified by the Secretary of State of this State, and under the seal thereof, shall be received in all the courts of this State as prima facie evidence of the due formation, existence and capacity of such corporation in any suit or proceedings brought by or against the same. And in case of companies organized under act number forty-one, laws of eighteen hundred and fifty-three and amendments thereto, and whose original articles of association and amendments are filed in the office of the Secretary of State, copies of such articles of association or amendments duly authenticated by the Secretary of State

Duty of secretary of state and county clerk in matter of recording.

Prima facie evidence of organization.

As to companies organized under act 41, laws of 1853.

under the seal of the State, shall be received in all courts of this State as prima facie evidence of the things therein stated.

Where the law requires articles of association to be acknowledged and filed in the office of the Secretary of State, as a condition precedent to the exercise of corporate functions, unacknowledged articles are not evidence of incorporation.—Doyle v. Mizner, 42 / 332. Proof of articles by copy certified by the Secretary of State must be a complete copy.—Ibid.

The certificate of the Secretary of State to a legal conclusion is of no validity as evidence. A mere certificate that a paper required to be acknowledged, is accompanied by an acknowledgment in the usual form, is of no effect.—Ibid.

Whether this statute does not recognize the corporation as in existence before the filing of the articles; and whether the want of such filing before commencing business is not an objection which can only be made on behalf of the State, as we are inclined to think, Quære.—Whipple v. Packer, 29 / 369.

Where articles of association have been executed and the company carries on business as a corporation, it is a corporation *de facto*, although its articles of association have not been recorded.—People v. Carter, 122 / 668.

Quorum.

SEC. 10. A majority of the directors of every manufacturing or mercantile corporation convened according to the by-laws, shall constitute a quorum for the transaction of business; and the stockholders holding a majority of the stock, at any meeting of the stockholders, shall be capable of transacting the business of that meeting, except as herein otherwise provided; and at all meetings of such stockholders each share shall be entitled to one vote. Stockholders may appear and vote in person or by proxy duly filed.

Stockholders, meeting.

Vote.

Directors holding over have the same power as during their regular term.—Preston National Bank v. Purifier Co., 84 / 364; Kimball v. Goodburn, 32 / 10.

Whatever a corporation may authorize to be done by its officers, it may ratify and adopt when done without authority.—McLaughlin v. D. & M. Ry. Co., 8 / 100. But the act ratified must be one which the company could have legally performed.—Taymouth v. Koehler, 35 / 22. The acts of a corporation may be proved by its records. Such records are the best evidence, etc.—Koehler v. Mechanics' Aid Soc., 22 / 86. But the discussions of the directors upon the subject of a resolution prior to its adoption are not provable as the expressions of the corporate body.—Kalamazoo, etc., Co. v. Macalister, 40 / 84. Nor as evidence of their final action upon it.—Peek v. Detroit Novelty Works, 29 / 313. Nor are the statements of individual directors made when the board was not in session, and not accompanying any official act, competent evidence of corporate action.—Ibid.

Though parol evidence is not admissible to contradict a record, it may be introduced to show facts omitted to be stated of record; and the rights of creditors or third persons cannot be prejudiced by the neglect of the clerk to perform his duty in properly recording actual proceedings.—Taymouth v. Koehler, 35 / 22.

Subscription to capital stock called in by installment.

SEC. 11. The directors may call in the subscription to the capital stock of such corporation by installments, in such proportion and at such times and places as they shall think proper, by giving notice thereof, as the by-laws shall prescribe; and in case any stockholder shall neglect or refuse payment of any such installment for the space of thirty days after the same shall have become due and payable, and after he shall have been notified thereof, said corporation may recover the amount of said installment from such negligent stockholder in any proper action for that purpose, or so much of the stock of such delinquent stockholder as may be necessary to pay such installment so due, may be sold by the directors at public auction at the office of the secretary of the corporation, giving at least thirty days' notice of such sale in some newspaper published in the county where said office is

Neglect to pay.

Sale of stock for.

located, if there is a newspaper published in such county; if not, then in some newspaper published in some adjoining county; and in case of a sale of said stock the proceeds thereof shall be first applied in payment of the installment called for and the expenses of the sale, and the residue, if any, shall be refunded to the delinquent stockholder. In case the proceeds of such sale shall be insufficient to pay said installment, said corporation may recover the balance from such negligent stockholder. Such sale shall entitle the purchaser to all the rights of a stockholder to the extent of the shares so purchased.

Rights of purchaser of stock so sold.

Equity will compel the collection of unpaid subscriptions to stock as a fund for the benefit of creditors.—Pettibone v. McGraw, 6 / 441.

When articles of association prescribe conditions upon which stock assessments are to be made, they must be strictly complied with.—Westcott v. Minnesota Mining Co., 23 / 145.

When a person signs articles of association of a corporation, the subscription itself constitutes the subscriber a stockholder, and he becomes liable to pay the amount, and the corporation becomes obligated to issue the stock to him upon payment of the amount. It is a mutual contract and such rights are assignable.—Valentine v. Water Power Co., 128 / 280.

Annual duplicate reports.

SEC. 12. Every corporation subject to this act, including every foreign corporation admitted to carry on business in this State under the provisions of this act, shall annually, in the month of January or February, make duplicate reports showing the condition of such corporation on the thirty-first day of December next preceding, on suitable blanks to be furnished by the Secretary of State, as hereinafter provided: *Provided,* Flour milling corporations shall make and deposit annual reports in the month of July for the year ending June thirty, preceding: *Provided further,* That any such corporation, which shall make and file with the Secretary of State a statement in writing certified to by its president and secretary, showing that its fiscal year ends at a time other than December thirty-first and that it is its custom to take an inventory and balance its accounts at the close of such fiscal year, and cannot make an accurate report for any other date, shall make its report showing its condition at the close of its fiscal year, such report to be filed within sixty days after such close of its fiscal year. Such reports shall state the amount each of common and preferred capital stock authorized, and the amount thereof subscribed for, and the amount thereof actually paid in in cash, and the amount thereof paid in property; the total value as near as may be estimated, of all property owned by the corporation; the value of different items or classes of property as follows: Real estate used in its business; real estate not used in its business; goods, chattels, merchandise, material and other tangible property; patent rights, copyrights, trademarks and formulas; good will; and all other property, specifying the kind; value of all credits owing to the corporation; the amount of debts of the corporation; the name and postoffice address of each stockholder and the number of shares of preferred and common stock held by him at the date of such

Proviso, flour milling corporations.

Fiscal year.

What to state.

report; the name and postoffice address of each officer and director of the corporation, and such other information as the Secretary of State may require. It shall be the duty of the Secretary of State in the month of December in each year, or in case of corporations whose fiscal year ends prior to December thirty-first, on application of such corporation, to mail to each corporation which is subject to the provisions of this act, suitable blanks on which shall be printed a copy of this section. Such reports shall be signed by a majority of the board of directors and verified by the oath of the secretary of the corporation, and deposited in the office of the Secretary of State within the said month of January or February, or within sixty days after the close of such fiscal year, accompanied by a filing fee of fifty cents. The Secretary of State shall carefully examine such reports, and if upon such examination they shall be found to comply with all the requirements of this section, he shall then file one of them in his office, and shall forward the other by mail or express to the county clerk of the county in which the office in this State, for the transaction of the business of said corporation, is situated. And it shall be the duty of such county clerk, upon receipt of such report, to immediately cause the same to be filed in his office. If any corporation neglect or refuse to make and file the reports required by this section within the time herein specified, and shall continue in default for ten days thereafter, its corporate powers shall be suspended thereafter until it shall file such report, and it shall not maintain an action in any court of this State upon any contract entered into during the time of such default; and any director of such corporation so in default, who has neglected or refused to join in the making of such report, shall be liable for all the debts of such corporation contracted since the filing of the last report of such corporation, and shall also be liable to such corporation for any damages sustained by it by reason of such refusal or neglect. And in case a corporation organized or doing business under the provisions of this act shall be dissolved by process of law, or whose term of existence shall terminate by limitation, or whose property and franchises shall be sold at mortgage sale, or at private sale, or if for any reason the attitude of the corporation toward the State shall be changed from that set forth in the articles of association, it shall be the duty of the last board of directors of such corporation within thirty days thereafter to give written notice of such change to the Secretary of State, signed by a majority of such directors and accompanied by a recording fee of fifty cents, which said notice shall be recorded as amendments are required to be recorded. And in case of neglect to give such notice, they shall each be subject to a penalty of five dollars for each and every day during the continuance

Secretary of state to furnish blanks.

How signed and verified.

Duty of county clerk.

Penalty for neglect to make report.

Termination of corporate existence, etc.

Secretary of state and county clerk to be notified.

Penalty for neglect to notify.

When neglect to file report deemed wilful.

of such neglect or refusal. The neglect or refusal to file the report, or to record the notice required by this section to be filed or recorded, shall be deemed wilful when such report or notice is not filed or recorded within the time herein limited. Whenever any corporation has neglected or refused to make and file its report within twenty days after the time limited in this section, the Secretary of State shall cause notice of that fact to be given by mail to such corporation, directed to its postoffice address. The certificate of the Secretary of State or his deputy, of the mailing of such notice, shall be prima facie evidence in all courts and places of that fact, and that such notices were duly received by said corporation.

Am. 1905, Act 194: 1907, Act 137.

Prior to present Const. many special charters required reports. First general act was 144 of 1851. See Sec. 11. Act 41, 1853, Secs. 5, 18 and 19. Act 232, 1885, Sec. 12.

This statute applies only to such of the directors as wilfully neglect or refuse to make the report.—Gennert v. Ives, 102 / 547. A presumption arises that the failure to file the report was intentional, and therefore wilful.—Ibid.

3 How. Stat., Sec. 4161b[1], which provides that manufacturing companies shall file an annual report with the Secretary of State, and that, if any of the directors shall wilfully neglect or refuse to make such report, they shall each be liable for all of the corporate debts, and subject to a prescribed penalty, only applies to such of the directors as wilfully neglect or refuse to make the report.—Gottlieb Gennert v. Albert Ives, Jr., 102 / 547.

Persons dealing with manufacturing corporations upon the strength of the reports which they are required to file with the Secretary of State and county clerk, a knowledge of which is acquired through the usual channels, have the right to rely upon the fairness and honesty of the statements therein made.—Henry Silberman and David Silberman v. Thomas Munroe, 104 / 352.

The report required by Sec. 12, and neglect to furnish which renders the directors of the corporation liable in certain cases to a penalty and to the creditors of the corporation, was very clearly intended as a means of furnishing information to those dealing with the corporation.—Ibid.

Under section 12 of Act No. 232, P. A. 1885, providing that the directors of corporations organized under said acts shall, in case of their wilful neglect to file an annual report, be individually liable for "all the debts" of the corporation, and subject to a prescribed penalty for each day during the pendency of the default, the directors are liable for corporate debts incurred after the default in filing a report, and before a second default.—Bank of Saginaw v. Pierson, 112 / 410.

The individual liability of directors of corporations for corporate debts, based upon their failure to make the annual report required by Sec. 12 of Act No. 232, P. A. 1885, extends to corporate debts contracted pending the default.—M. I. Wilcox Cordage and Supply Co. v. Mosher, 114 / 64.

Corporate powers.

SEC. 13. Every corporation organized or existing under this act shall have power to have succession by its corporate name for the period limited in its charter, or by this act; to sue and be sued in any court of law or equity, with the same rights and obligations as a natural person; to make and use a common seal and alter the same at pleasure; to ordain and establish by-laws for the government and regulation of its affairs, and to alter and repeal the same; to elect all necessary officers and to appoint and employ such agents as the business may require.

The charter defines the grant of power to the corporation with its restrictions and limitations; and unless some other statute enlarges or restricts those powers, it has no other or different rights.—Bank of Michigan v. Niles, 1 Doug., 401.

Corporations possess only such properties and powers as are specifically granted by their charters, or as are incident to their existence, and necessary to carry into effect the powers expressly given.—Orr v. Lacey, 2 Doug., 253.

As incident to their powers, corporations may appoint servants and agents

for the transaction of their business.—Town v. Bank of River Raisin, 2 Doug., 549. Such appointments may be made and proved by parol. So, the authority of an agent may be inferred from the recognition and adoption of his acts, or acquiescence therein by the corporation.—Peninsular Bank v. Hanmer, 14 / 208; Taymouth v. Koehler, 35 / 22. Any limitations on the usual powers of a general agent of a corporation will not bind those dealing with him without notice of the restrictions.—Adams Mining Co. v. Senter, 26 / 73. The same person may be the general agent of two companies, and act for both in their dealings with each other.—Ibid. But an agent cannot as such agent, deal or contract with himself as an individual.—People v. Overyssel, 11 / 222; Flint & P. M. Ry. v. Dewey, 14 / 477. Unless specially empowered so to do, a general agent has no authority to make promissory notes in the name of his corporation.—N. Y. Iron Mine v. Bank of Negaunee, 39 / 644. The corporation, and not its managing agent, is liable for the trespasses committed by his subordinates, unless they were the servants of and acting for the agent in the business in which the trespass was committed.—Bath v. Caton, 37 / 199.

Whatever a company may do or authorize to be done, may be ratified and adopted as its act, when performed without its authority by its officers or agents.—McLaughlin v. D. & M. R'y Co., 8 / 100.

Suits to enforce corporate rights must be brought in the name of the corporation.—LaGrange v. State Treasurer, 24 / 468. It may sue in its own name on claims assigned to it.—Watertown Ins. Co. v. G. & B. S. M. Co., 41 / 131. Stockholders cannot sue in their own names to secure corporate rights, unless there is default and breach of duty, and a refusal by the corporation itself to sue.—LaGrange v. State Treasurer, 24 / 468; Talbot v. Scripps, 31 / 268. Provisions in an act for the organization of corporations regulating the bringing of suits against them, when later than the general law of the State on that subject, must be regarded as exceptions to it.—Dewey v. Cent. Mfg. Co., 42 / 399.

Corporate franchises and privileges must be such franchises and privileges as an unincorporated collection of people cannot possess.—M. E. Church of Newark v. Clark, 41 / 730, 731. They are vested in the corporation and not in the stockholders or members.—Detroit v. Mutual Gas Light Co., 43 / 594. The acts which a corporation may do are not necessarily separate franchises. Some of its powers may be franchises which cannot be exercised without State permission. As to such of its business as any one may do, a corporation stands on the same footing with a private person.—Thompson v. Waters, 25 / 241.

The grant of specific powers under restrictions, impliedly excludes all other powers in reference to the same subject matter not granted by the charter.—Bank of Mich. v. Niles, 1 Doug., 401.

Except as prohibited by statute, a corporation may mortgage its property, rights and franchises, the same as an individual may mortgage, etc. But the power to mortgage such franchises as are essentially corporate, such as the franchise of being a corporation, or of exercising the right of eminent domain, requires special authority.—Joy v. J. & M. P. R. Co., 11 / 155. The foreclosure purchaser of the property, rights and franchises of a corporation may exercise and enjoy them the same as the corporation could, but subject to the same restrictions and conditions.—Detroit v. Mutual Gas Light Co., 43 / 594. A mortgage authorized by a majority of the directors when the others were not legally notified, is invalid.—Doyle v. Mizner, 42 / 332. A mortgage executed by the president and secretary without any formal action by the company authorizing it, but agreed on by the directors and stockholders when assembled, held good.—Eureka Iron Works v. Bresnahan, 60 / 332.

An association or body, exercising corporate powers and having contracted as a corporation, will not be allowed to evade its obligations by denying its corporate character.—Empire Mnfg. Co. v. Stuart, 46 / 482. But it seems that a corporation will not be estopped from denying its power to make a contract previously entered into by it.—Dermont v. Mayor, 4 / 435, 445. A person associating with others in forming a pretended corporation and in claiming existence for it, will be estopped from denying the validity of its organization.—Swartwout v. Mich. A. L. R. R. Co., 24 / 389; Monroe v. Fort Wayne, I. & S. R. R. Co., 28 / 272; Jhons v. People, 25 / 499. But there will be no estoppel where such recognition has been fraudulently procured.—Doyle v. Mizner, 42 / 332.

Corporations are bound by the acts of their agents to the same extent, and under the same circumstances, as natural persons.—Delta Lumber Co. v. Williams, 73 / 86.

A chattel mortgage executed by the president and the secretary of a corporation, with the consent of all the stockholders, is valid.—Kalamazoo Spring & Axle Co. v. Winans, Pratt & Co., 106 / 193.

A note and mortgage given by a corporation cannot be defeated in the hands of a good faith purchaser before dishonor, who took the same as a result of negotiations with the officers of the corporation, on the ground that the transaction out of which the securities grew was ultra vires.—Woodcock v. First Nat. Bank of Niles, 113 / 236.

Power to hold property.

SEC. 14. Every such corporation shall have power to purchase, hold and convey all such real and personal estate as the

purposes of the corporation shall require, and all other real and personal estate which shall have been bona fide conveyed or mortgaged to said corporation by way of security, or in satisfaction of debts. Any corporation formed under this act may purchase real or personal property necessary for its business, and issue its authorized capital stock to the amount of the value thereof in payment therefor, and the capital stock so issued shall be full paid stock, and not liable to any further call, neither shall the holder thereof be liable to any further payment under any of the provisions of this act, except the liability imposed by section twenty-nine; and in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property shall be conclusive. And in addition to the powers hereinbefore enumerated, every corporation organized under this act shall possess and exercise all such rights and powers as are necessarily incidental to the exercise of the powers expressly granted herein. It may also purchase and hold any grant of land made by the government to aid in any work of internal improvement.

May issue stock in payment for property.

Incidental powers.

A corporation can make no contract forbidden by its charter, or which is not necessary either directly or indirectly for the accomplishment of the purpose for which it was formed.—Dermont v. Mayor, 4 / 435, 445. Contracts in violation of the charter are void.—Ibid; Smith v. Barstow, 2 Doug., 155.

The acknowledgment (of conveyances) should be made by the person representing the corporation in the act. The officer having charge of the seal is the proper person to affix it and to acknowledge, etc.—Merrill v. Montgomery, 25 / 73. The seal is evidence that it was affixed by proper authority.—Benedict v. Denton, Walk. Ch., 336.

Possession of property by an officer of a corporation is not the company's possession unless taken or held for that purpose.—Doyle v. Mizner, 40 / 160.

The power to take, hold and convey real and personal estate is incident to every corporation, unless expressly prohibited, or the power be clearly repugnant to the purposes of its creation.—Regents, etc., v. Detroit Y. M. Soc., 12 / 138, 160. Except as restricted by statute, a corporation has the same power as an individual to sell and convey its corporate property, rights and franchises.—Detroit v. Mutual Gas Light Co., 43 / 594. The mere right of a corporation to purchase and sell property is not strictly a franchise. But it is a right held in common with individuals, without grant.—Thompson v. Waters, 25 / 214, 224.

A common law incident to every corporation, without special mention in its charter, is the power, unless restrained, to take, hold and convey lands. —Bank of Mich. v. Niles, 1 Doug., 401; Town v. Bank of River Raisin, 2 Doug., 548. And if there is any legal purpose for which lands conveyed to a corporation can be held by it, the presumption will be that the conveyance was for that purpose.—Thompson v. Waters, 25 / 227, 231.

But when a corporation is especially authorized to hold lands for certain purposes, or to a specified amount or value, or such as are acquired in a particular manner, it can hold only in accordance with such provisions.—Bank of Mich. v. Niles, 1 Doug., 401.

The rights of a corporation to its property are not affected by any change in its organization which does not destroy its corporate character and identity.—Board of Health, etc., v. East Saginaw, 45 / 261.

The power to acquire and hold real estate is not allowed to private corporations except under prescribed conditions.—Chapman v. Colby, 47 / 51.

Corporate authorities, and generally the directors, have power to compromise any corporate debt, and if, in the collection of subscriptions, there is any doubt as to the liability of a subscriber, the corporation may compromise the liability and release a part for the purpose of securing the residue.—Whitaker v. Grummond, 68 / 249.

A corporation with legal capacity to hold property may take and hold it in trust in the same manner and to the same extent as a private individual. —White v. Rice, 112 / 403.

Corporations cannot enter into copartnership with each other. A combination or pool between corporations, whose purpose is to create a monopoly to control traffic, is clearly within the prohibition of the Federal statute known as the "Sherman Act," and is therefore unlawful and void.—White Star Line v. Star Line, 141 / 604.

SEC. 15. The books of every such corporation containing their accounts shall be kept, and shall at all reasonable times be open in the city, village or town where such corporation is located, or at the office of the treasurer of such corporation, within this State, for inspection by any of the stockholders of said corporation, and said stockholders shall have access to the books and statements of said corporation and shall have the right to examine the same in said city, village or town, or at said office; and as often as once in each year a true statement of the accounts of said corporation shall be made and exhibited to the stockholders.

Books of account, where kept.

Inspection of.

Annual statement.

A mandamus will lie to compel a corporation to allow members to examine its books and records, if they have interests at stake, which render the inspection necessary.—People v. Walker, 9 / 328.

In the absence of any statutory provision, a stockholder has a common law right in a proper case and for a proper purpose to inspect corporate records and documents.—Woodworth v. Old National Bank, 154 / 459.

SEC. 16. The stock of every such corporation shall be deemed personal property, and be transferred only on the books of such corporation, in such form and manner as their by-laws shall prescribe, and such corporation shall at all times have a lien upon all the stock or property of its members invested therein, for all debts due from them to such corporation.

Stock deemed personal property, transfer of.

Lien on.

A bona fide purchaser for value, of a certificate of shares, duly indorsed by the party to whom it was issued, will be protected in his title, the same as a purchaser of negotiable paper. The transfer or entry of the transfer upon the books of the company, is not necessary to the validity of the purchaser's title. Such entry on the books of the company is necessary only for the benefit and security of the company.—Mandelbaum v. N. A. Mining Co., 4 / 465. When a company has made a transfer of shares upon its books and issued new certificates to the transferee therefor, it will be thereafter estopped from denying his title to the stock.—Ibid.

A transfer of stock, whether recorded or not, conveys the interest of the holder, and is valid, except as against persons having equities; and a judgment creditor, buying at an execution sale, with notice of the transfer, can get no better title than his debtor had.—Newberry v. Detroit & L. S. Iron Co., 17 / 141.

Certificates of stock are assets in the hands of their owner.—Walker v. Detroit Transit Co., 47 / 338. May be transferred by indorsements in blank. Possession of such certificates, properly indorsed, is prima facie evidence of ownership, and a holder thereof for value without notice of prior equities obtains a perfect title thereto.—Ibid.

Assumpsit cannot be maintained in the name of a corporation against an original stockholder for the price of his stock, where no assessment therefor has been made, and the required percentage of capital stock has never been paid in, and there is no showing of the assent of the directors to any special arrangement under which it is claimed that the liability arises. Nor will it lie for stock calls where none have ever been made.—Halsey Fire Engine Co. v. Donovan, 57 / 318.

The entry of a transfer of shares of stock upon the books of the corporation is not necessary to the validity of the transferee's title, which becomes absolute upon the delivery to him of the certificate, with an assignment of the shares indorsed thereon, signed by the owner.—McLean v. Medicine Co., 96 / 479. A purchaser of shares of stock, upon the assignment and delivery of the certificate, becomes a stockholder, and is entitled to all of the rights of every other stockholder, notwithstanding the refusal of the president of the corporation to enter the transfer upon its books, and he may compel the making of such entry by the proper proceeding.—Ibid.

SEC. 17. Every corporation organized or existing under the provisions of this act may at any annual meeting or any meeting duly called for that purpose, by a resolution adopted by a vote of two-thirds in interest of its capital stock, amend

Amendment of articles of association.

its articles of association in any manner not inconsistent with the provisions of this act, but such amendment shall not become operative until a copy of such resolution, signed by the president and secretary of the corporation, shall have been recorded as is provided herein for the recording of original articles of association, when such amendments shall have the same force and effect as though said amendments had been included in the original articles, and the record, or a copy of the record of such resolution, certified as provided in section nine, shall be received in all courts of this State, as prima facie evidence of the things therein stated.

A manufacturing company organized under Act 232 of 1885, may extend the term of its corporate existence, as fixed in its articles of association, for a term not exceeding the constitutional limit of 30 years, by amending its articles as provided in section 17 of the act.—Ovid Elevator Co. v. Secretary of State, 90 / 466.

Proceedings to increase or decrease capital stock must be as prescribed in subsection 4 of section 2.—Continental Varnish and Paint Co. v. Secretary of State, 128 / 621.

Removal of place of business.

Certificate of.

SEC. 18. Any corporation organized or existing under the provisions of this act may remove its place of business from any city, village, or town in this State, where it is or may be located, to any other city, village or town in this State, by a vote of two-thirds of its stockholders in interest. But in case of a removal from one county to another, the president and secretary of such corporation shall attach to their articles of association, a certificate that such corporation has thus removed and said articles of association, together with said certificate, shall be left for record immediately on such removal, in the office of the county clerk of the county to which such corporation shall remove, and they shall be recorded by such clerk, at full length in the book kept by him for that purpose. And the president and secretary of such corporation shall immediately upon such removal, cause a certificate thereof to be recorded in the office of the Secretary of State, and also in the office of the county clerk of the county from which it removes.

Return of articles of association after recording.

Fee for recording.

SEC. 19. The Secretary of State and any county clerk, after recording the articles of association and certificates specified by this act to be recorded by them, shall return the same, each with his endorsement of record thereon, to said corporation; and for recording the articles of association and certificates required in this act, the Secretary of State and county clerk shall each be entitled to receive at the rate of twenty cents for each folio.

May establish office outside of state and hold stockholders' meetings.

Proviso, service of process.

SEC. 20. It shall be lawful for any corporation organized or existing under the provisions of this act to establish an office or offices for the transaction of business without this State and within the United States and to hold any meeting of the stockholders or directors of such company at such office so provided for: *Provided,* That there shall always be one business office within this State, and that service of any notice or process may be made upon the agent in charge of

such office, which shall be binding upon such corporation. The place of holding such offices shall be fixed by a vote of a majority of stockholders at any lawful meeting called for that purpose, and after being fixed shall not be changed within one year, and shall be certified by the directors of such corporation to the Secretary of State of this State within two months from the time such office or offices were so located. Offices, how located; not to be changed within year.

A court acquires no jurisdiction where the summons is served on an agent of the corporation in charge of an office other than the business office designated by the stockholders and certified to the Secretary of State. A return which shows that the service was made on an agent but does not state that he was the agent in charge of such office does not confer jurisdiction.—Toledo Ice Co. v. Munger, 124 / 4.

SEC. 21. If the capital stock of any such corporation shall be withdrawn, and refunded to the stockholders before the payment of all the debts of the corporation for which such stock would have been liable, the stockholders of such corporation shall be jointly and severally liable to any creditor of such corporation, in an action founded on this statute, to the amount of the sum refunded to him or them respectively. Refunding of capital stock, prior to payment of all debts, to render stockholders liable for.

Corporate property is liable for debts of the corporation, and so long as it can be traced, it may be followed into the hands of members in the manner provided by the organic law and the by-laws of the corporation.—Brewer v. Mich. Salt Assn., 58 / 351.

Persons dealing with a corporation have a right to resort to its capital stock for the payment of its debts, and the corporation cannot, to the injury of its creditors, impair its capital by the payment of dividends.—American Steel & Wire Co. v. Eddy, 130 / 266.

SEC. 22. If the directors of any such corporation shall declare and pay a dividend when the corporation is insolvent, or any dividend, the payment of which would render it insolvent, knowing such corporation to be insolvent, or that the payment of such dividend would render it so, the directors assenting thereto shall be jointly and severally liable in an action founded on this statute, for all debts due from such corporation at the time of paying or declaring such dividend. Dividend, when directors liable for declaring.

It is a well recognized principle of law that the directors of a corporation, and they alone, have the power to declare a dividend of the earnings of the corporation, and to determine its amount.—Hunter v. Roberts, Thorpe & Co., 83 / 63.

A right to a dividend from the profits of a corporation is no debt until the dividend is declared. Until that time the dividend is only something that may possibly come into existence, but the obligation on the part of the corporation to declare it, cannot be treated as the dividend itself.—Lockhart v. Van Alstyne, 31 / 78.

An agreement by a corporation to pay a dividend to preferred stockholders, without reference to its ability to pay them from its earnings, is opposed to public policy and void.—Id.

SEC. 23. If any corporation organized or existing under this act shall violate any of its provisions, the directors ordering or assenting to such violation, shall be jointly and severally liable in an action founded on this statute, for all debts contracted after such violation as aforesaid, to the extent of three times the amount paid in on the stock standing in the name of such director in any such corporation. Other cases, when directors liable.

A stockholder and director of a corporation who has voted at a regular meeting of the directors, at which a majority were present, in favor of a resolution to mortgage the property of the corporation, cannot complain that such resolution was not regularly adopted because one of the other directors, who voted in favor of the resolution, was the indorser of paper secured by the mortgage, and two other directors so voting had indemnified him in writing as such indorser.—111 / 420.

Lien of corporation upon stock of stockholders, how enforced.

SEC. 24. Any corporation organized or existing under this act, which has a lien upon the stock of any stockholder therein as provided by the sixteenth section, may give notice to such stockholder that unless he shall pay his indebtedness to said corporation within three months from the time of giving such notice, then such corporation will proceed to sell and transfer the stock of such stockholder in said corporation, and upon default of payment said corporation may sell the stock of such indebted stockholder as hereinafter provided, and any such corporation may prescribe by its by-laws the manner of giving the notice required by this section.

Idem.

SEC. 25. Such corporation may, at any time within six months after it shall have given the notice required by the preceding section to such indebted stockholder of its intention to sell such stock, and the three months notice shall have expired, advertise in one or more newspapers published in said county where such corporation is located, and if there is no newspaper published in said county, then in a newspaper published in an adjoining county, giving at least three weeks' notice of the time and place when and where such stock will be sold, and at the time and place of sale shall state the amount due from such stockholder to such corporation, and then proceed to sell for cash at public auction, to the highest bidder therefor, so much of the stock of such indebted stockholder as shall pay in full the indebtedness of such stockholder to such corporation, together with the necessary costs of sale; and if the sale of the entire stock of such indebted stockholder shall not be sufficient to pay in full the claim of said corporation on said stock, such corporation shall credit the amount received for such stock, less the costs of sale, to said indebted stockholder, and may proceed to collect the remainder of their debt by any proper action for that purpose.

Where the remedy provided for and pursued by the company for unpaid calls is an absolute forfeiture of the stock to the use of the company, such forfeiture operates as a rescission of the contract of sale of the stock to the subscriber, and releases him from further payments on his subscription.—Carson v. Arctic Mining Co., 5 / 288. But where the remedy is by forfeiture and sale of the stock to obtain the amount of the call, reserving the surplus on sale, if any, to the subscriber, the power of sale is in the nature of a mortgage security. The remedy in such case is merely cumulative, leaving the subscriber liable in an action on his subscription for the deficiency on sale, if any.—Merrimac Mining Co. v. Bagley, 14 / 501; Dexter & M. P. R. R. Co. v. Millerd, 3 / 91. The right to forfeit shares must come from the law, and can only be exercised in the manner prescribed by the law. Where the articles of association are the law governing the right of forfeiture, all conditions precedent prescribed by them must be strictly complied with.—Westcott v. Minnesota Mining Co., 23 / 145, 163. The authority for forfeiting a member's corporate rights and privileges must be clearly shown and strictly pursued.—Pulford v. Fire Department of Detroit, 31 / 458. The power of forfeiture is consistent with common law; it can only be granted by clear legislative enactment, and cannot be enforced without notice or an opportunity to be heard.—Roehler v. Mechanics' Aid Soc., 22 / 86.

Issue of certificates to purchasers of stock sold.

SEC. 26. Whenever the purchaser of said stock shall have complied with the conditions of said sale, the corporation shall issue new certificates of stock to such purchaser, or to their order, and shall cancel upon the books of the corporation the certificates of such indebted stockholders, and the new certificates so issued shall entitle the holders thereof to all the privileges, rights and interests of a stockholder in such corporation.

When stock is pledged to third party, corporation may sell equity of redemption.

SEC. 27. Whenever any stockholder in any such corporation shall have made a transfer or assignment of his stock as security for his indebtedness to a third party, and afterwards shall become a debtor to such corporation, such corporation may sell the equity of redemption of such stock in the same manner as is provided for the sale of stock on which it has a lien, and shall credit the amount received from such sale to such indebted stockholder. Such corporation may require the party holding the transfer or assignment of such stock, to give a statement to the treasurer of such corporation, under oath, of the amount for which said stock was pledged; and if said party shall not give such a statement at or before the time such sale is to take place, he shall forfeit all claim and lien on such stock or any part thereof, and such corporation may sell the same as herein provided.

Statement from person holding stock as collateral.

Liens acquired by attachment not to be affected.

SEC. 28. Nothing contained in the four preceding sections shall affect any lien or right acquired by any other party by virtue of any attachment or levy of execution upon the stock of any stockholder in any such corporation.

Liability of stockholders for labor debts, enforcement of.

SEC. 29. The stockholders of all corporations organized or existing under this act shall be individually liable for all labor performed for such corporations, which said liability may be enforced against any stockholder by action founded on this statute, at any time after an execution shall be returned unsatisfied, in whole or in part, against the corporation, or at any time after an adjudication in bankruptcy against said corporation, and the amount due on such execution shall be prima facie evidence of the amount recoverable, with costs against any such stockholder; and if any stockholder shall be compelled by any such action to pay the debts of any creditor, or any part thereof, he shall have the right to call upon all the responsible stockholders to contribute their equal part of the sum so paid by him as aforesaid, and may sue them, jointly or severally, or any number of them, and recover in such action the amount due from the stockholder or stockholders so sued.

The benefit of the provision is confined to laborers.—Peck v. Miller, 39 / 594. The stockholder's obligation for labor is not created by personal obligation, but by law.—Pettibone v. McGraw, 6 / 441.

Under somewhat similar provisions for the protection of laborers, it has been held that contractors and sub-contractors are not laborers, etc., within the meaning of the statute.—Chicago & N. E. R. R. Co. v. Sturgis, 44 / 538. But the work done by a man's team may be regarded as labor performed by him.—Ibid. This section does not make stockholders primarily liable for the labor debts of the corporation. The stockholders stand in the position of sureties for the debt; their liability is only collateral to that of the company. Hence, if the creditor accepts the company's note for the demand and

extends the time of payment, the stockholders are released.—Hanson v. Donkersly, 37 / 184.

The stockholders of all corporations and joint stock associations shall be individually liable for all labor performed for such corporation or association. —Const., Art. XV, Sec. 7. The individual liability of stockholders under the Constitution, for labor debts, is a liability beyond that of members of the corporations.—Milroy v. Spur M. I. M. Co., 43 / 231; and is collateral to that of the corporation.—Hanson v. Donkersly, 37 / 184.

Where, in an action against a stockholder to recover the amount of damages and costs awarded to the plaintiff in a suit against the corporation for personal labor, judgment is taken for the amount of the damages only, an objection that the return to the execution issued against the corporation failed to show that the sheriff could not collect the costs is without force.—Macomber v. Wright, 108 / 109.

Each stockholder or member of a corporation is so far an integral part thereof that, in a suit brought to determine the amount of indebtedness of the corporation preparatory to an assessment upon the stockholders to pay the same, he is represented through the corporation itself, and bound and concluded by the determination therein.—Mutual Fire Insurance Co. v. Phoenix Furniture Co., 108 / 170.

A guaranty by the organizers of a corporation, who have issued the entire capital stock to themselves as fully paid, that stock purchased from them is "non-assessable" until the full par value of all of the stock shall have been expended in the enterprise, operates to indemnify subsequent purchasers against liability under a statute declaring that stockholders shall be individually liable to the creditors of the corporation in an amount equal to their stock, such liability to be enforced by an action against all of the stockholders, in which the amount payable by each upon the total corporate indebtedness shall be found and determined.—Omo v. Bernart, 108 / 43.

A judgment against a corporation upon its acceptance of a draft for the purchase price of goods sold to it under an arrangement with its treasurer that an accounting between it and the vendor should be had at stated intervals, and that 30, 60 and 90 day acceptances should be given and received for the amounts found due, is, in the absence of evidence that the accepted draft was itself received as payment, a judgment for goods, wares and merchandise within the meaning of the statute (1 How. Stat., Sec. 3940), making stockholders individually liable on such judgments after execution against the corporation has been returned unsatisfied.—Kirkpatrick v. Mehalitch, 113 / 631.

Act No. 141, P. A. 1877 (1 How. Stat., Sec. 4886, et seq.), prescribing a general method for enforcing the individual liability of the stockholders of insolvent corporations, applicable to all cases except where labor claims are sought to be enforced by the persons performing the labor, was not repealed or in any way abrogated by Act No. 232, P. A. 1885 (3 How. Stat., Sec. 4161a, et seq.), section 29 of which makes the stockholders of all corporations organized thereunder individually liable for all labor performed by the corporation and provides that such liability may be enforced against any stockholder by action founded upon said statute. Hence, the assignee of a labor claim against a corporation organized under the last mentioned act can only enforce the liability of the stockholders therefor by proceeding in accordance with the act of 1877.—Musselman v. Wright, 107 / 639.

How. Stat., Sec. 4161c[5], making the stockholders of a manufacturing corporation individually liable for all labor performed therefor, and providing that such liability may be enforced against "any stockholder" upon the return of an execution against the corporation unsatisfied, applies only to those who were stockholders in the corporation at the time the labor was performed.—Kamp v. Wintermute, 107 / 635.

The provisions of Act No. 79, P. A. 1893, subjecting foreign corporations theretofore authorized to do business in this State to the payment of a specified franchise fee upon every increase of capital stock does not apply to an increase of stock made prior to the passage of the act, although the certificate thereof was not filed with the Secretary of State until after the act took effect; and this notwithstanding the provision of 3 How. Stat., Sec. 4161d[6], that foreign corporations when permitted to carry on business in this State shall be subject to all the restrictions and liabilities of domestic corporations, and the provision of 3 How. Stat, Sec. 4161a[1], subd. 4, that an increase in the capital stock of a domestic corporation shall be operative from the date when the certificate is received by the Secretary of State.—Warren-Scharf Co. v. Sec'y of State, 115 / 234.

Service of process, etc., against corporation.

SEC. 30. Service of any notice or legal process against any corporation formed or existing under this act may be made on the president or any vice president, secretary, treasurer, assistant secretary or treasurer, general manager, superintendent, cashier or any other officer of the corporation, or upon the agent in charge of any business office of such corporation within this State, or if neither of such officers or

agent can be found, then such service may be made by posting a true copy thereof in some conspicuous place at the business office of the corporation in this State.

Am. 1909, Act 313.
Where substituted service is relied on the statute must be strictly complied with.—Merrill v. Montgomery, 25 / 73.
The treasurer of a corporation has no power as such to confess judgment for it.—Stevens v. Carp River I. Co., 57 / 427.
Since the passage of Act No. 242, Laws of 1887, service of process may be made upon the proper officers of a corporation in the county where the plaintiff resides, although its business office is located in another county; the legislature intending to place corporations upon the same footing as individuals as regards service of process against them.—Potter v. Hutchinson Mfg. Co., 79 / 207.
A court acquires no jurisdiction where the summons is served on an agent of the corporation in charge of an office other than the business office designated by the stockholders and certified to the Secretary of State. A return which shows that the service was made on an agent, but does not state that he was the agent in charge of such office, does not confer jurisdiction on the justice.—Toledo Ice Co. v. Munger, 124 / 4.

Assessment and taxation.

SEC. 31. All corporations formed or existing under this act shall be liable to be assessed for all real and personal estate held by them in this State, at its true value, and shall pay thereon a tax for township, village, city, county and State purposes, the same as other real and personal estate, and such tax shall be assessed, collected and paid in the same manner as other taxes on real and personal estate are required to be assessed, collected and paid: *Provided,* Nothing herein contained shall authorize the taxing of the capital stock of such corporation as such capital stock.

Proviso.

A corporation whose property is taxable in this State stands on the same footing as an individual, under our taxing laws.—Graham v. Township of St. Joseph, 67 / 652.

Property liable to execution for claims against corporation only.

SEC. 32. That all articles of machinery, materials for manufacturing, or manufactured articles belonging to any such corporation, shall be free from seizure by execution or distress, for any debts or claims for rents or services, in whose hands soever they may be, except such execution or claim be against such corporation.

Corporations are liable the same as natural persons, on their contracts.—Cicotte v. St. Anne's Church, 60 / 552. May be liable for goods purchased and received, although in violation of their by-laws.—Donovan v. Halsey, etc., Co., 58 / 38. Not liable for the debts of a firm out of which it is organized.—McLellan v. Detroit File Works, 56 / 579.
Where a corporation has received the benefit of services it cannot repudiate its indebtedness therefor on the ground that its by-laws did not permit it to run in debt without the order of its directors, especially if the directors have never denied liability on that ground.—Donovan v. Halsey Fire Engine Co., 58 / 38.
Where an association purports to be a corporation, and is recognized as such by the public authorities, its corporate existence cannot be attacked, and its members held liable as partners, by a creditor who has dealt with it as a corporation.—Gow v. Collin & Parker Lumber Co., 109 / 45.
The owner of a mortgage purporting to be given by a corporation, by seeking to foreclose it, affirms the corporate existence of the mortgagor.—Id.

Proceedings for continuation of corporate existence by corporation about to expire by limitation of time.

SEC. 33. It shall be lawful for any corporation organized or existing under the provisions of this act, whose corporate existence is about to terminate by limitation of law, at its annual meeting next preceding, or at a special meeting called for that purpose, to be held within one year immediately pre-

ceding the date of such termination, by a vote of two-thirds of its capital stock, to direct the continuance of its corporate existence for such further term, not exceeding thirty years, as may be expressed in a resolution for that purpose. Upon the adoption of such resolution by the stockholders, it shall be the duty of the president and secretary to make, sign, and acknowledge articles of association, as in the case of a new corporation, to which shall be appended a copy of such resolution verified by the oath of the secretary, which articles of association and copy of resolution shall be recorded, certified, and returned as is provided herein in case of a new corporation, and the record, or a transcript of the record, certified by the Secretary of State of this State under the seal thereof, shall be prima facie evidence of the things therein contained. Upon the expiration of the time limited for the existence of such old corporation, a new corporation shall be deemed to be formed by such articles of association, which shall at once succeed to all the property and rights of action of the old corporation, and shall be liable for all of its debts or other obligations, and the officers of the old corporation shall succeed to like offices in the new corporation, and every stockholder in the old corporation shall be, to a like extent, a stockholder in the new corporation.

The words "limitation of law," as used in section 33 of Act No. 232, Laws of 1885, only apply to the constitutional limitation of 30 years.—Ovid Elevator Co. v. Secretary of State, 90 / 466.

As applied to corporations which have not organized for the full period of 30 years, the statute, within the constitutional limits, is valid, and would authorize them to renew their corporate existence for the remainder of the constitutional limitation. We do not therefore declare the statute unconstitutional, but that it does not apply to corporations whose period of existence is fixed by their articles of association to 30 years. We do not decide, however, that the law of 1882, as amended in 1887, applies to corporations formed previous to the passage of those acts.—Mason v. Perkins, 73 / 303.

Although the case cited applies especially to Act 16, P. A. 1882, as amended in 1887, the decision covers section 33 of Act 232 of 1885.

Certain law, when to apply

SEC. 34. To corporations organized or existing under the provisions of this act, in the absence of any applicable provision herein contained, the provisions of chapter two hundred thirty of the Compiled Laws of eighteen hundred ninety-seven may be applied.

Power to create and issue two kinds of stock.

SEC. 35. Any such company shall have power to create and issue certificates for two kinds of stock, viz.: General or common stock, and preferred stock, which preferred stock shall at no time exceed two-thirds of the actual capital paid in, and shall be subject to redemption at par at a certain time to be fixed by the by-laws of said corporation, and to be expressed in the certificates therefor. And the holder of such preferred stock shall be entitled to a fixed dividend, payable quarterly, half-yearly or yearly, which said dividend shall be cumulative, payable at the time expressed in said certificate, not to exceed eight per cent per annum, before any dividend shall be set apart or paid on the common stock. In no event shall the holder of such preferred stock be individually or personally liable for the debts or other liabilities of said cor-

Holder entitled to dividends.

poration, excepting debts for labor. Said corporation shall be controlled by a board of directors elected by the preferred and common stockholders, excepting when otherwise provided in the articles of association or amendments thereto: *Provided always,* If at any time upon a fair valuation of the assets of the corporation the common stock shall be impaired in an amount equal to ten per cent thereof or any dividend due on the preferred stock shall remain unpaid for sixty days then holders of the preferred stock shall have an equal right with the common stock share and share alike to participate in the election of directors and control of said corporation. If for any reason said corporation shall cease business or become insolvent then after the payment of all liabilities and debts the remainder of the assets of said corporation shall be applied first in payment in full of all preferred stock and then unpaid dividends due thereon, and the balance divided pro rata, share and share alike among the holders of the common stock. Every corporation organized or existing under the provisions of this act may by a vote of three-fourths in interest of its capital stock amend its articles of association providing for the issue of preferred and common stock, in accordance with this section, in the same manner and with the same effect as is now provided by section seventeen of this act, relating to amending articles of association.

Proviso.

When insolvent, remainder of assets payable to preferred stock.

We think that the law means that no preferred stock can be authorized beyond two-thirds of the amount of capital actually paid in at the time of authorizing the issue.—Continental Varnish & Paint Co. v. Secretary of State, 128 / 621. This case holds that the certificate of amendment must show that the authorized preferred stock does not exceed two-thirds of the capital then paid in.

A dividend is a sum set apart from the profits of the corporation to be divided among its members. A dividend among preferred stockholders only indicates that the profits have not been sufficient to yield a dividend to the stockholders generally.—Lockhart v. Van Alstyne, 31 / 76. An agreement by a corporation to pay annual dividends to preferred stockholders, without reference to its ability to pay them from earnings, is void.—Ibid. Mandamus will not lie to compel the payment of dividends when declared.—Van Norman v. Cent. Car. Mnfg. Co., 41 / 166. Corporate assets, although under private control, can be used only by corporate authority.—McKee v. Grand Rapids & R. L. St. Ry. Co., 41 / 274. Directors can use corporate funds only for corporate purposes.—Gallery v. Bank of Albion, 41 / 169.

SEC. 36. This act shall not include nor apply to any of the corporations provided for in the following statutes: Chapters one hundred sixty to one hundred sixty-four, both inclusive; chapters one hundred sixty-six to one hundred eighty, both inclusive; chapter one hundred eighty-four, chapters one hundred eighty-six and one hundred eighty-seven, both inclusive; chapters one hundred ninety-three to two hundred twenty-nine, both inclusive, of the Compiled Laws of eighteen hundred ninety-seven, as amended.

Corporations not included in this act.

SEC. 37. This act shall include and apply to all the corporations provided for in the following statutes: Chapters one hundred fifty-eight, one hundred eighty-one, one hundred eighty-two, one hundred eighty-three, one hundred eighty-five, one hundred eighty-eight, one hundred ninety, one hundred ninety-one and one hundred ninety-two of the Com-

Corporations included in this act.

piled Laws of eighteen hundred ninety-seven, as amended, and in addition shall repeal all other acts and parts of acts inconsistent with the provisions of this act. But the repeal of the foregoing acts shall not dissolve any corporation formed or existing under them, and all corporations of the nature of the corporations authorized to be organized under this act, now organized and existing under said several acts in this section mentioned, or either of them, shall be deemed and taken to be organizations under this act, and all rights, obligations and liabilities contracted, acquired or incurred by any of such last mentioned corporations thereunder, or under the provisions of any law now in force, not inconsistent with the provisions of this act, shall continue of the same force and effect as though such acts or laws had not been repealed; and all such corporations from and after the taking effect of this act, shall be subject to all the provisions hereof, as fully as though such organizations had been perpetual thereunder, and such organizations may continue to carry on the business specified in their articles of association under the provisions of this act as lawfully as if said acts mentioned in this section were not repealed: *Provided,* That nothing in this act contained shall be construed as in any wise affecting any other corporations whatever, organized under the several above named acts, for purposes other than those mentioned in section one of this act, but as to all such corporations the said several acts shall remain in full force. All corporations hereafter organized for any of the purposes provided for in this act shall incorporate under this act: *And provided further,* That any corporation mentioned or referred to in this section which, under the law under which it was organized, had the right or power to use the streets, lands and squares of any city, town or village for its corporate purposes, with the consent of the municipal authorities thereof, and under such reasonable regulations as they might prescribe, shall continue to have such right or power under this act as they enjoyed at the time of the passage of act number two hundred thirty-two of the public acts of nineteen hundred three, of which this act is an amendment.

Acts repealed.

Corporations now existing to be organizations under this act.

Proviso.

Further proviso, as to continuation of rights and powers.

Am. 1905, Act 112.

FOREIGN CORPORATIONS.

AN ACT to prescribe the terms and conditions on which foreign corporations may be admitted to do business in Michigan.

[Act 206, P. A. 1901, as amended by Act 34, 1903; Act 310, 1907; Act 3, Extra Session, 1907.]

The People of the State of Michigan enact:

SECTION 1. It shall be unlawful for any corporation organized under the laws of any State of the United States, except the State of Michigan, or of any foreign country, to carry on its business in this State, until it shall have procured from the Secretary of State of this State a certificate of authority for that purpose. To procure such certificate of authority every such foreign corporation or association shall comply with the following provisions: It shall file and record in the office of the Secretary of State a certified copy of its charter, or articles of incorporation, and file evidence of appointment of an agent in this State to accept service of process on behalf of said corporation, and shall pay to the Secretary of State the requisite filing, recording and franchise fees. Such corporation, by its president, secretary, treasurer and superintendent, or any two of them shall make and file with the Secretary of State a statement duly sworn to by at least two of such officers, in such form as the Secretary of State may prescribe, containing the following facts: Certificate of authority.

First, The location of its principal office and its principal place or places of business, and the names and addresses of its principal officers; Statement.

Second, The location of its principal office and the principal place of business in Michigan, and the name and addresses of the officers or agent of the company in charge of its business in Michigan;

Third, The total value of the property owned and used by the company in its business, giving its location and general character and stating separately the value of its tangible property, of its cash and credits, its franchises, patents, trade marks, formulas, good will;

Fourth, The value of the property owned and used in Michigan and where situated;

Fifth, The total amount of business transacted during the preceding year and the amount of business, if any, transacted in Michigan;

Sixth, Such other facts bearing on the matter as the Secretary of State may require, including a statement of the particular purpose, or the particular kind of business for which the company desires admission to this State.

SEC. 2. From the papers so filed and the facts so reported and any other facts coming to his knowledge bearing upon the question, the Secretary of State shall determine the propor- Proportion of capital represented in Michigan.

tion of the authorized capital stock of the company represented by its property and business in Michigan. Any such corporation shall have the right on application, to be heard by the Secretary of State touching the matter of the determination of the proportion of its capital stock represented by property used and business done in Michigan. Any corporation aggrieved by the decision of the Secretary of State, may, within ten days, appeal to a board of appeal consisting of the Auditor General, State Treasurer, and Attorney General, whose decision in the matter shall be final.

Fee.

SEC. 3. Such company shall pay to the Secretary of State a franchise fee of one-half a mill on each dollar of the proportion of its authorized capital stock represented by the property owned and used and business transacted in Michigan, determined as above provided. And in case such corporation is not at the time of admission carrying on any business outside of Michigan, it shall pay a franchise fee on its entire authorized capital stock. But such fee shall in no case be less than twenty-five dollars.

Secretary of state to issue certificate.

SEC. 4. When such corporation has fully complied with the provisions of this act, the Secretary of State may issue to such corporation a certificate of authority to carry on such business in this State, during the period of its corporate existence, but not exceeding thirty years: *Provided,* That no such foreign corporation shall be permitted to transact business in this State unless it be incorporated in whole, or in part, for the purpose or object for which a corporation may be formed under the laws of Michigan, and then only for such purpose or object. And the Secretary of State shall in the certificate which he issues state under what act such corporation is to carry on business in this State, and such corporation shall have all the powers, rights and privileges and be subject to all the restrictions, requirements and duties granted to or imposed upon corporations organized under such act: *Provided further,* That the carrying on in this State by such corporation, of business for which it has not been so admitted, or failure to fully comply with the requirements of the act under which it has been so admitted, shall be sufficient cause for revoking the certificate of authority to do business in this State, and the Secretary of State may revoke such certificate and shall promptly notify such corporation of such revocation and the reasons therefor by notice sent by mail to the home office of such corporation.

When certificate may be revoked.

Statement of increase.

SEC. 5. Every corporation which has paid a franchise fee and been admitted to do business in this State, which shall thereafter increase its authorized capital, or shall increase the proportion of its capital stock, represented by property used and business done in Michigan, shall within thirty days after such increase file an additional statement with the Secretary of State and pay an additional franchise fee of one-half of one mill on each dollar of the amount of increase of

Additional statements.

its capital stock represented by property owned and business done in Michigan. And any such corporation shall at any time when requested by the Secretary of State, file an additional statement under oath of at least two of its officers, showing the proportion of its property used and business transacted in Michigan. Every corporation subject to the provisions of this act, which shall neglect or fail to comply with its requirements, shall be subject to a penalty of not less than one hundred dollars nor more than one thousand dollars for every month that it continues to transact business in Michigan, without complying with the requirements of this act, to be recovered by action in the name of the people of the State of Michigan in any court of competent jurisdiction.

Penalty for violation of act.

SEC. 6. No foreign corporation, subject to the provisions of this act, shall be capable of making a valid contract in this State until it shall have fully complied with the requirements of this act, and at the time holds an unrevoked certificate to that effect from the Secretary of State.

Contracts void.

SEC. 7. It shall be unlawful for any person to act as agent for any foreign corporation not authorized to do business in this State or in any manner to aid in the transaction of the business of such unauthorized foreign corporation in this State. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than fifty dollars, nor more than five hundred dollars for each offense and in default of payment of such fine, shall be imprisoned in the county jail for a period of not less than thirty days nor more than one year, or he may be punished by both such fine and imprisonment at the discretion of the court.

Unlawful to act as agent.

SEC. 8. The provisions of this act shall not be applicable to such foreign corporations as are permitted to do business in this State by license issued by the Commissioner of Insurance, or by the State Treasurer, according to the provisions of law. Nor shall this act be construed to prohibit any sale of goods or merchandise which would be protected by the rights of interstate commerce.

Not applicable to certain corporations.

SEC. 9. The term "corporations" as used in this act shall be construed to include all associations, partnership associations and joint stock companies having any of the powers or privileges of corporations, not possessed by individuals or partnerships, under whatever term or designation they may be defined and known in the state where organized.

"Corporations" defined.

SEC. 10. No such corporation having appointed an agent to accept service of process shall have power to revoke or annul such appointment until it shall have filled [filed] notice of appointment of some other person in this State as such agent. Service of process may also be made upon any officer or agent of such corporation in this State, or service may be made upon the Secretary of State, who shall immediately notify the corporation thus served, by mailing notice thereof and a copy

Service of process.

of such process to its address. There shall be paid to the Secretary of State at the time of such service a fee of five dollars, which sum may be taxed as costs to the plaintiff in case he prevails in the proceeding.

Corporations created in other states have no rights of citizenship here.—Home Ins. Co. v. Davis, 29 / 238. Nor can such a corporation exercise any of its powers or franchises here, without legislative permission, express or implied.—Thompson v. Waters, 25 / 214. Such assent may be denied entirely, or it may be granted upon conditions. And as a condition for permission to carry on business here, such corporations may be required to submit their controversies here, to the exclusive jurisdiction of the State courts.—Home Ins. Co. v. Davis, 29 / 238.

The right of a foreign corporation to do business in Michigan is a matter entirely under the control of the legislature, which may deny such right at any time, except that the denial must not amount to a regulation of commerce, interstate or foreign; and the conditions upon which foreign corporations may do business within this State to this extent are absolutely within the discretion of the legislature.—Isle Royale Land Co. v. Osmun, 76 / 163.

Act No. 79, Laws of 1893, does not apply to foreign corporations whose business within this State consists merely of selling through itinerant agents, and delivering, commodities manufactured outside of this State.—Colt & Co. v. Sutton, 102 / 324; but where a corporation so engaged files a copy of its articles of association in this State, and pays the specified franchise fee under protest, mandamus will not lie to compel the repayment thereof.—Moline Plow Co. v. State Treasurer, 105 / 58.

Contract in this State for sale of its property by a foreign corporation which has not paid its franchise fee required by Act 79 of 1893 is void.—Rough v. Breitung, 117 / 48.

If they (brewing companies) establish places within this State, distinct from the manufactory, where their goods are to be stored, for the purposes of sale and delivery, and such goods are sold and delivered, then they become traffickers, within the meaning of the law, and are liable to pay the tax.—Reymann Brewing Co. v. Brister, 179 U. S., 445; cited in People v. Voorhis, 131 / 398.

A contract by a foreign corporation to construct and equip a factory in this State, in the performance of which materials must be purchased and labor performed in this State, notwithstanding the machinery is manufactured and shipped from another state, and the corporation maintains no office, warehouse or general agent in the State, is not interstate commerce, and the contract is not exempt on that ground from the operation of the statute. (Act 206 of 1901.) Hastings Industrial Co. v. Moran, 143 / 679.

MINORITY REPRESENTATION IN BOARDS OF DIRECTORS.

[Act 112 P. A. 1885.]

The People of the State of Michigan enact:

Rights of stockholders in selection of directors.

SEC. 1. In all elections for directors of any corporation organized under any general law of this State, other than municipal, insurance and banking corporations, every stockholder shall have the right to vote, in person or by proxy, the number of shares of stock owned by him for as many persons as there may be directors to be elected, or to cumulate said shares, and give one candidate as many votes as will equal the number of directors multiplied by the number of shares of his stock; or to distribute them on the same principle among as many candidates as he shall think fit. All such corporations shall elect their directors annually, and the entire number of directors shall be balloted for at one and

Directors elected annually.

the same time and not separately: *Provided,* That the by-laws of any such corporation shall not be so amended as to reduce the number of directors of such corporation, in case the votes of a sufficient number of shares are recorded against such proposed amendment, which, if cumulatively voted, as herein provided, would elect one or more directors, where the same number of shares, if cumulatively voted, would not be sufficient to elect the same number of directors of the reduced board: *Provided further,* That associations formed for social, yachting, hunting, boating, fishing and rowing purposes, under act number twenty-two of the public acts of eighteen hundred eighty-three, approved April ten, eighteen hundred eighty-three, entitled "An act to authorize the formation of clubs for social purposes," the same being section seven thousand seven hundred thirty-three to seven thousand seven hundred thirty-nine, both inclusive, of the Compiled Laws of eighteen hundred ninety-seven, or under section seven thousand six hundred sixty-seven of the Compiled Laws of eighteen hundred ninety-seven, may elect a portion of their directors for a longer term than one year, as may be provided in their by-laws.

Proviso as to amendment of by-laws.

Proviso as to certain associations.

Am. 1903, Act 223; 1905, Act 61; 1907, Act 141.

MAY CONTINUE FOR THREE YEARS TO CLOSE BUSINESS.

[Sec. 8534, C. L. 1897.]

All corporations whose charters shall expire by their own limitation, or shall be annulled by forfeiture or otherwise, shall nevertheless continue to be bodies corporate, for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock; but not for the purpose of continuing the business for which such corporations have been or may be established.

May continue, for what purposes.

Where corporations are created under general laws, allowing an existence of thirty years, and authorizing transactions which in the usual course of things could not be brought into litigation within three years after any sudden dissolution, it would not be competent for the legislature by arbitrary repeals, to destroy contracts or other assured rights. Therefore, a corporation formed under such a law, can begin legal proceedings in its own name at any time within three years after the end of its period and continue them to a close, unless superseded by trustees or receivers; and the repeal of the general law would not necessarily end or shorten the existence or destroy all the franchises of corporations previously formed under it.—Bewick v. Alpena Harbor Co., 30 / 700.

"The act of 1887 aforesaid was passed and the proceedings for renewal of said original Pewabic Mining Company were conducted after the expiration of the qualified existence of the said corporation for the term of three years after April 4, 1883, aforesaid, under section 4687, How. Stat., Mich., to wit: After April 4, 1886; and at the time of the passage of said act, and of the conducting of the alleged proceedings under which the said respondents

justify in their said plea, the corporate existence of said corporation was not about to terminate by limitation of law, but had already terminated, and the dissolution of said corporation had become complete."—Mason v. Perkins, et al., 73 / 310.

WINDING UP OF MINING AND MANUFACTURING CORPORATIONS.

See C. L. 1897, Secs. 7083-7104.

VOLUNTARY DISSOLUTION OF CORPORATIONS.

See Chap. 300, C. L. 1897.

A corporation cannot dissolve itself by its own act.—Town v. Bank of River Raisin, 2 Doug., 530.

A corporation may make a general assignment for the benefit of its creditors.—Town v. Bank, etc., 2 Doug., 530. Unless prohibited by its charter or by statute.—Covert v. Rogers, 38 / 363. It will not work a dissolution; the possession of property is not necessary to corporate existence; may be made by the directors.—Ibid, 2 Doug., 530. An assignee will not be disqualified merely by reason of his being a stockholder, or a former officer of the company, or insolvent. Such a selection for assignee might be considered in determining the good faith of the transaction. Upon that question, it is competent for directors to testify as to their motives, etc.—Covert v. Rogers, 38 / 363.

The objection that Act No. 262, Laws of 1889, which provides for the winding up of mining and manufacturing corporations whose charters have expired by proceedings in the equity court, is unconstitutional, in that it does not make stockholders necessary parties to said proceedings and contains no sufficient provisions for notice to them, is not tenable.—Brown v. Mining Co., 105 / 653.

Stockholders in a corporation are not entitled, upon its dissolution, to any of its property, until its debts are paid; and they are estopped from denying that they are liable therefor to the extent of their interest.—Brewer v. Mich. Salt Assn., 58 / 351.

GENERAL ANNOTATIONS.

Every abuse of its powers by a corporation is a violation of the law of its being, and a forfeiture of its franchises.—Atty. Gen. v. Oakland Co. Bank, Walk. Ch., 90. A forfeiture once incurred, is not to be atoned for by subsequent good behavior.—People v. Bank of Pontiac, 12 / 527. A cause of forfeiture cannot be taken advantage of collaterally, but only by a direct proceeding on behalf of the State against the corporation to enforce it.—Merrill v. Montgomery, 18 / 338. And until the State chooses to insist on the forfeiture, no one else can.—People v. Bank of Pontiac, 12 / 527, 537; and unless insisted by the State within a reasonable time, it will be deemed waived.—Swartwout v. Mich. Air Line R. R., 24 / 389, 396. A forfeiture or dissolution cannot be declared without a judicial determination.—Flint & F. P. R. Co. v. Woodhull, 25 / 99. Nor by an ex parte proceeding.—Merrill v. Montgomery, 18 / 338. A corporation may be ousted of illegal franchises and protected in its legal ones.—Stewart v. Father Matthew Soc., 41 / 67, 74.

A corporation is always, so far as its property is concerned, a mere trustee for its stockholders, whose interests are in its corporate charge.—Lenawee Co. S. Bank v. City of Adrian, 66 / 273.

One who has united with others in an agreement to form a corporation, and pursuant thereto has joined in the execution of articles of association, cannot defend an action upon his stock subscription on the ground that it was procured by the false representation of some of his associates in the enterprise, made while they were acting as a soliciting committee appointed at a preliminary public meeting. Such a case is not within the rule that a principal, by accepting the benefits of an unauthorized contract made by an agent, assumes the incident obligations.—St. Johns Mfg. Co. v. Munger, 106 / 90.

Where an association has been recognized by the public authorities as a duly organized corporation, and has done business and filed its annual reports as such, creditors who have dealt with it and brought suit against it

as such corporation cannot attack its corporate existence, and hold its stockholders liable as partners.—Amer. Mirror & Glass Bev. Co. v. Bulkley, 107 / 447. The corporate existence of a body is not to be questioned by those who have dealt with it as a corporation.—Merchants, etc., Bank v. Stone, 38 / 779.

A stockholder who has paid for his stock in full is not personally liable to the creditors of the corporation for its unissued stock, in the absence of a showing that he subscribed for or purchased his stock in furtherance or with knowledge of a fraudulent scheme to organize and carry on an illegal corporation.—Amer. Mirror & Glass Bev. Co. v. Bulkley, 107 / 447.

How. 4161a[8].

Where the law requires articles of association to be acknowledged and filed in the office of the Secretary of State, as a condition precedent to the exercise of corporate functions, unacknowledged articles are not evidence of incorpoation.—Doyle v. Mizner, 42 / 332. Proof of articles by copy certified by the Secretary of State must be by a complete copy.—Ibid.

When a valid corporate organization is proved, its continuance will be presumed until the contrary is shown.—Atty. Gen. v. Mich. St. Bank, 2 Doug., 359.

The existence of a corporation or the regularity of its organization cannot be questioned in a collateral proceeding; but only by the State in a suit instituted for that purpose.—Cahill v. K. M. Ins. Co., 2 Doug., 124; Swartwout v. Mich. A. L. R. R. Co., 24 / 389; Jhons v. People, 25 / 499; Whipple v. Parker, 29 / 379.

But when the time limited for the existence of a corporation has expired, any further right to exercise corporate powers, may be questioned collaterally. And so where the right to exercise any special privilege for a specified time has ended.—Grand Rapids Bridge Co. v. Prange, 35 / 400.

The State may be precluded, by delay and acquiescence, from denying corporate existence, or insisting on forfeitures.—People v. Oakland Co. Bank, 1 Doug., 282; People v. Maynard, 15 / 463. But it will not be estopped from questioning the incorporation of a company because a municipality has recognized it as a corporation.—Atty. Gen. v. Hanchett, 42 / 436.

The corporate seal is presumptive evidence of valid corporate authority.—Merrill v. Montgomery, 25 / 73.

Act No. 162, Laws of 1893, does not require that the corporate seal be attached to instruments purporting to have been executed by the corporation, but only makes it prima facie proof of due authority whenever it is attached thereto.—Sarmiento v. Boat & Oar Co., 105 / 300.

The president of a corporation, who is also its general manager, has general authority to appear, to employ counsel, and to answer to suits brought against the corporation, and is authorized, without special authority from the corporation, to execute a bond for the corporation on appeal from one court to another.—Id.

How. 4161b[9].

Corporate acts are such as imply an assertion of corporate existence, and such as distinctly pertain to corporate powers. They must not be ambiguous, or such as may as properly belong to partnerships, or unincorporated associations.—M. E. Church v. Clark, 41 / 730; Fredenburg v. Lyon Lake Church, 37 / 476; Allen v. Duffie, 43 / 1, 3. A corporation can be bound by corporate acts only.—Finley Shoe and Leather Co. v. Kurtz, 34 / 89. Corporate functions must be exercised by corporate officers.—LaGrange v. State Treasurer, 24 / 468. Corporations can contract only by such agents or officers as have express or implied authority. Individual directors cannot bind the company.—Lockwood v. Thunder Bay, etc., Co., 42 / 536. An agreement by all the stockholders severally, on behalf of the company, does not bind it. Where joint action is required, individual action will not avail.—Finley S. & L. Co. v. Kurtz, 34 / 89. The acts or omissions of individual stockholders do not bind the corporation.—James v. P. & G. R. R. Co., 8 / 91. The president and secretary are presumably authorized to make ordinary agreements on behalf of the corporation.—Fitch v. Constantine Hydraulic Co., 44 / 74.